

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF PUERTO RICO

In re:	:	
	:	
COMPENDIUM INC.	:	Case No. 94-03008 (GAC)
	:	
Debtor	:	Chapter 11
	:	

DECISION AND ORDER

BACKGROUND

On August 9, 1995, the debtor filed an objection to claim #4 filed by the State Insurance Fund of Puerto Rico ("SIF") (dkt. #60). SIF did not respond to the debtor's objection and the Court granted the objection on October 25, 1995. On December 28, 1995, SIF filed a motion for reconsideration (Dkt. #83). The debtor filed a response, supplementing the objection to SIF's claim (Dkt. #99).

SIF's claim includes \$113,719.17 as priority and \$4,823.63 as unsecured. The debtor objected to the claim on four grounds. The debtor argued that the claim is not a tax entitled to priority. In the alternative, the debtor argued that if the claim for workmen's compensation premiums could be considered a tax entitled to priority, then the debtor objects to priority status being given to the amount of \$57,805.89 as the amount pertains to the year 1990-1991. The amount was due on January 31, 1991 and thus is outside of the priority period. The debtor also objects to the allowance of \$819.47 for 1993-1994 and the

amount of \$4,823.63, pertaining to an employment accident, since the debtor claims that these amounts were paid. The debtor included what appears to be a cancelled check for the amount of \$819.47 and a receipt from the commonwealth in the amount of \$4,823.63.

SIF's motion for reconsideration addresses the issue of whether a workmen's compensation premium should be considered a tax and entitled to priority under the Bankruptcy Code. SIF has not addressed the debtor's arguments regarding which years are entitled to priority nor has SIF refuted the debtor's arguments regarding payments made.

DISCUSSION

Pursuant to the First Circuit's decision in In re Pan American Paper Mills, Inc., 618 F.2d 159 (1st Cir. 1980), the Court finds that unpaid workmen's compensation premiums are a tax entitled to priority in bankruptcy. Although it is true, as the debtor points out, that there are numerous decisions holding that workmen's compensation premiums are not a tax, this is not the law in this Circuit. Whether or not the decisions holding that the premiums are not a tax are persuasive, this Court is bound by the precedent established by the United States Court of Appeals for the First Circuit. Accordingly, SIF's claims that pertain to the priority period, will be allowed as taxes entitled to priority.

Whatever type of tax a workman's compensation premium is, the Bankruptcy Code generally only extends the priority period back to three years prior to the filing of the petition. See 11 U.S.C. §§ 507(a)(8)(A), (D) and (E). The debtor filed this petition on June 9, 1994. The debtor indicates that SIF's claim for the year 1990-1991 was payable on January 31, 1991 and thus falls outside of the priority period. The Court finds that since the premium was payable more than three years prior to the filing of the petition, SIF's claim, in the amount of \$57,805.89, for the year 1990-1991 is not entitled to priority.

The debtor has produced evidence which suggests that SIF's claim in the amount of \$819.47 for 1993-1994 and the amount of \$4,823.63, pertaining to an employment accident, were previously paid by the debtor. SIF has not refuted the debtor's arguments in this regard. Accordingly, \$819.47 will be deducted from SIF's priority claim and \$4,823.63, listed by SIF as an unsecured claim, will be disallowed.

ORDER

Wherefore IT IS ORDERED that SIF is allowed a priority claim in the amount of \$55,093.81 and a general unsecured claim in the amount of \$57,805.89. The priority claim for 1993-1994, in the amount of \$819.47, is disallowed. The general unsecured claim from 1988, in the amount of \$4,823.63, is disallowed.

SO ORDERED.

San Juan, Puerto Rico this ____ day of May, 1996.

Gerardo A. Carlo
U.S. Bankruptcy Judge